

Effective 5/10/2016

77-32-302 Assignment of counsel on request of indigent or order of court.

- (1) An indigent criminal defense services provider shall be assigned to represent each indigent and shall provide the legal defense services necessary for effective representation, if the indigent is under arrest for or charged with a crime in which there is a substantial probability that the penalty to be imposed is confinement in either jail or prison if:
 - (a) the indigent requests legal defense; or
 - (b) the court on its own motion or otherwise orders legal defense services and the defendant does not affirmatively waive or reject on the record the opportunity to be provided legal defense.
- (2)
 - (a) If a county responsible for providing indigent legal defense has established a county legal defender's office and the court has received notice of the establishment of the office, the court shall assign to the county legal defender's office the responsibility to defend indigent defendants within the county and provide defense resources.
 - (b) If the county or municipality responsible to provide for the legal defense of an indigent has arranged by contract to provide those services through a defense services provider, and the court has received notice or a copy of the contract, the court shall assign the defense services provider named in the contract to provide legal defense.
 - (c) If no county or municipal defense services provider contract exists, the court shall select and assign a legal defense provider.
 - (d) If the court considers the assignment of a noncontracting legal defense provider to an indigent defendant despite the existence of a defense services provider contract and the court has a copy or notice of the contract, before the court may make the assignment, it shall:
 - (i) set the matter for a hearing;
 - (ii) give proper notice of the hearing to the attorney of the responsible county or municipality and county clerk or municipal recorder; and
 - (iii) make findings that there is a compelling reason to appoint a noncontracting attorney.
 - (e) The indigent's preference for other counsel or defense resources may not be considered a compelling reason justifying the appointment of a noncontracting defense services provider.
- (3) The court may make a determination of indigency at any time.

Amended by Chapter 177, 2016 General Session